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SUBJECT: World Customs Organization (WCO) Establishment of
Counterfeiting and Piracy (CAP) Group

SUMMARY: The World Customs Organization (WCO) Council, made up of the Directors General of 174 Customs Administrations, recently approved the establishment of a Counterfeiting and Piracy (CAP) Group, which will serve as a platform for WCO Members to constructively exchange views and deeply discuss matters of relevance in the realm of border-focused Intellectual Property Rights (IPR) protection. This group marks a new start to IPR-related discussions in the WCO after the 2-year efforts of the former SECURE (Standards Employed by Customs for Uniform Rights Enforcement) Working Group were ended, primarily due to major concerns with respect to standard and norm setting, which was seen by several Members as a direct challenge to the stature of the preeminent World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The first meeting of the CAP Group is provisionally scheduled to take place at the WCO in Brussels, Belgium in October 2009. U.S. Customs and Border Protection (CBP), as the lead USG representative to the WCO, will evaluate draft agendas for the WCO CAP group and regularly engage other USG stakeholders (as appropriate and consistent with established interagency procedures) in advance of future meetings of the WCO CAP group to ensure optimal USG representation. END
SUMMARY

BACKGROUND:

Since the June 2007 Council sessions, the World Customs Organization and its Member Customs Administrations had been developing the SECURE (Standards Employed by Customs for Uniform Rights Enforcement) program, through the SECURE Working Group, as a primary means to catalog best practices and enforcement tactics used by Customs Administrations to battle the illicit cross-border movement of IPR infringing goods. Simultaneous to these SECURE Working Group efforts, the WCO Secretariat has been providing IPR-focused training and technical assistance (Capacity Building) to WCO Members requesting same. The SECURE program had been expected to be the primary resource from which capacity building for WCO Members requesting such assistance would ultimately be derived, once finalized and approved by the WCO Council.

Development of the SECURE program, and even the Terms of Reference for the SECURE Working Group itself, became increasingly debated and embroiled in political dynamics at the SECURE Working Group meetings. This was most generally brought about through the coordinated actions of various Latin America-based WCO Members (Brazil, Argentina, Ecuador, etc.) and was compounded by unchecked private sector participation in the sessions. Together, these conditions limited the constructive dialogue which could be undertaken by the group. Due to this impasse, it was finally determined at the WCO Policy Commission sessions in Buenos Aires, Argentina in December 2008 that the SECURE Working Group would no longer meet and that the WCO Secretariat would develop Terms of Reference for a new IPR-focused Working Group at the WCO.

Over the course of several months (March - June 2009), the former Chairperson of the SECURE Working Group led a WCO Member-driven dialogue on a way forward for IPR in the WCO. During this dialogue,

a new Terms of Reference was agreed upon by the participating 22 WCO Member Customs Administrations, including a significant number of participants from Latin American Administrations which had objected to the SECURE program. The U.S. supported the adoption of the Terms of Reference by the WCO Council to ensure that IPR dialogue continued in a dedicated IPR group at the WCO. Aspects of IPR will also be addressed as a recurring topic on the agendas of other WCO Committees, including its Permanent Technical Committee (to which the CAP Group will report) and its Enforcement Committee. Aside from the general value to be gained through sharing of views and experiences in the WCO CAP Group sessions, CBP foresees value in the regular and more informal engagement, over the course of several days and meetings per year, of IPR experts from Customs Administrations on the sidelines of the sessions as a means to advance common goals and objectives. The CBP Point of Contact is Ms. Therese Randazzo, Director for IPR Policy and Programs, CBP Office of International Trade, and she can be contacted at therese.randazzo@dhs.gov.

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Murray